

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD DONALD THOMAS,

Defendant-Appellant.

UNPUBLISHED

January 17, 2008

No. 274469

Wayne Circuit Court

LC No. 06-007912-01

Before: Talbot, P.J., and Zahra and Meter, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for kidnapping, MCL 750.349, fourth-degree criminal sexual conduct, MCL 750.520e(1)(b)(i), and domestic violence, MCL 750.81(2).¹ Defendant was sentenced as a second habitual offender, MCL 769.10, to 66 months to 15 years' imprisonment for the kidnapping conviction, one to two years' imprisonment for the fourth-degree criminal sexual conduct conviction, and to 93 days in jail, time served, for the domestic violence conviction. We affirm.

Defendant argues that there was insufficient evidence to sustain his convictions for kidnapping and fourth-degree criminal sexual conduct. This Court reviews the record de novo when presented with a claim of insufficient evidence. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). In addition, "this Court reviews the evidence in the light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt." *People v McKinney*, 258 Mich App 157, 165; 670 NW2d 254 (2003). This Court will not interfere with the fact-finder's role in weighing the evidence and judging the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992). "It is for the trier of fact . . . to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Conflicts in the evidence are resolved in the prosecution's favor. *People v Fletcher*, 260 Mich App 531, 562; 679 NW2d 127 (2004).

¹ We note that defendant was charged but found not guilty of third-degree criminal sexual conduct, MCL 750.520d(1)(b), and assault with intent to commit sexual penetration, MCL 750.520g(1).

Michigan recognizes kidnapping either by secret confinement or forcible seizure. *People v Hoffman*, 225 Mich App 103, 112; 570 NW2d 146 (1997). The elements of forcible seizure kidnapping are: “(1) a forcible confinement of another within the state, (2) done willfully, maliciously and without lawful authority, (3) against the will of the person confined or imprisoned, and (4) an asportation of the victim which is not merely incidental to an underlying crime *unless* the crime involves murder, extortion or taking a hostage.” *People v Wesley*, 421 Mich 375, 388; 365 NW2d 692 (1984) (emphasis in original).

Contrary to defendant’s argument that there was insufficient evidence to support his kidnapping conviction, under the totality of the circumstances, a rational trier of fact could conclude otherwise. According to the victim’s testimony, defendant grabbed her by her neck and pulled her into his car, thereby forcibly confining her in his vehicle. The victim asserted she told defendant that she did not want to go with him, and screamed and fought with defendant in the car, but that defendant kept driving, demonstrating that the victim’s confinement was against her will.

The victim and witness, Isaac Dansby, both testified that after driving the victim to a residence with access to a telephone, defendant demanded a sum of money from Dansby in exchange for releasing the victim. This evidence demonstrates that defendant asported² the victim for the incidental purpose of extorting money. Based on this evidence, a rational trier of fact could conclude that defendant’s forcible confinement of the victim was done willfully, maliciously, and without lawful authority. According greater weight to the testimony of the victim, Dansby, and police, and lesser weight to inconsistencies in the testimony of the victim and other witnesses, a rational trier of fact could conclude that the prosecution proved the elements of kidnapping beyond a reasonable doubt.

Defendant also asserts that there was insufficient evidence to convict him of fourth-degree criminal sexual conduct. To convict defendant of fourth-degree criminal sexual conduct, the prosecution was required to prove that defendant intentionally touched the victim’s genital area or the clothing covering that area; that the touching was done for sexual purposes or could reasonably be construed as having been done for sexual purposes; and, that defendant used force or coercion to commit the sexual act. *People v Capriccioso*, 207 Mich App 100, 103; 523 NW2d 846 (1994). A victim’s testimony in a criminal sexual conduct case does not need to be corroborated. MCL 750.520h.

The victim testified that defendant used physical force to compel her to have sex with him, and that he bit her during the sexual assault. The victim asserted that the only reason she had sex with defendant was because she was afraid of him. A police officer testified that

² Although the term asportation is not included in the language of MCL 750.349, “asportation of the victim is a judicially required element of the crime of kidnapping by forcible confinement or imprisonment. To establish the element of asportation, there must be some movement of the victim taken in furtherance of the kidnapping that is not merely incidental to the commission of another underlying lesser or coequal crime.” *People v Green*, 228 Mich App 684, 696-697; 580 NW2d 444 (1998) (citations omitted).

defendant, in response to post-arrest questioning, admitted having intimate contact with the victim and described the sex as consensual but “rough.” This evidence confirms that defendant intentionally touched the victim for a sexual purpose. In ascertaining whether defendant used force to commit the sexual act, a rational trier of fact could believe the victim’s testimony that the intercourse was involuntary and question the veracity of defendant’s assertion that the sex was consensual, albeit physically rough. Consequently, based on a review of all the evidence, a rational trier of fact could conclude that defendant was guilty of fourth-degree criminal sexual conduct.

Affirmed.

/s/ Michael J. Talbot

/s/ Brian K. Zahra

/s/ Patrick M. Meter